

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 17 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BATTLE MOUNTAIN BAND OF THE
TE-MOAK TRIBE OF WESTERN
SHOSHONE INDIANS,

Plaintiff-Appellant,

v.

UNITED STATES BUREAU OF LAND
MANAGEMENT; JILL C. SILVEY, in
official capacity as Bureau of Land
Management Elko District Manager,

Defendants-Appellees,

CARLIN RESOURCES, LLC,

Intervenor-Defendant-
Appellee.

No. 16-16016

D.C. No.
3:16-cv-00268-LRH-WGC

ORDER*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Argued and Submitted February 13, 2017
San Francisco, California

Before: CANBY, SILER, ** and HURWITZ, Circuit Judges.

* This order is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Eugene E. Siler, United States Circuit Judge for the U.S.

The Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians (“the Band”) moved for a preliminary injunction in the district court to prevent the Bureau of Land Management (“BLM”) “from issuing any authorizations or notices to proceed” relating to the construction of a power line authorized in a BLM Record of Decision, or “allowing or permitting any ground-disturbing activities related to the Power Line,” including “all earth work or work in preparation of or construction of foundations for power poles or other structures.” The district court denied the motion for a preliminary injunction and the Band appealed. Both the district court and this Court denied the Band’s motions for an injunction pending appeal, and the parties agree that construction of the power line has now been completed.

In light of the completion of construction of the power line, we dismiss this appeal from the denial of the preliminary injunction as moot. *In Def. of Animals v. U.S. Dep’t of Interior*, 648 F.3d 1012, 1013-14 (9th Cir. 2011) (per curiam). The underlying action, however, is not moot, and our dismissal is without prejudice to the Band raising in the district court any applications for interlocutory relief arising out of the operation and use of the power line, and is not intended to affect the ability of the district court to order any appropriate relief on final judgment.

Court of Appeals for the Sixth Circuit, sitting by designation.

This order constitutes the mandate of this Court.

APPEAL DISMISSED.